

§ 891.823

24 CFR Ch. VIII (4–1–04 Edition)

the project is a tax-credit project, a pro forma showing how the project will continue to operate for the required period after the end of the tax-credit period;

(j) *Market analysis.* An analysis of the projected market for the proposed mixed-finance development;

(k) *Management and occupancy policies.* A summary of the proposed management and occupancy policies to be implemented for the assisted units at the development, consistent with § 891.410, and a description of application and tenant selection procedures for the units without HUD funding;

(l) *Facilities.* A statement addressing the adequacy of existing facilities and services for the prospective occupants of the development and a description of public improvements needed to ensure the viability of the proposed development with a description of the sources of funds available to carry out such improvements;

(m) *Environmental review.* Any additional environmental information HUD deems necessary in completing its environmental review;

(n) *Certifications and assurances.* (1) Certificates and assurances that the mixed-finance owner has authority under State and local law to develop housing for elderly persons or persons with disabilities and to enter into all agreements and provide all assurances required under this subpart. In addition, the Nonprofit Organization must certify that it has the legal authority to enter into the partnership agreement under which it acts as the sole general partner with for-profit limited partners and to fulfill all its obligations as partner. The Nonprofit Organization must also certify that it has obtained all necessary approvals for this purpose. The mixed-finance owner will be responsible to HUD for ensuring that the 202 or 811 units are developed and operated in accordance with all applicable HUD requirements. The mixed-finance owner must also warrant that it will provide for a mechanism to assure, to HUD's satisfaction, that the 202 or 811 units will remain available for use by very low-income families for 40 years;

(2) A certification of the mixed-finance owner's previous participation as

stated in 24 CFR part 200, subpart H, and shall ensure that all participating parties submit a similar certification to HUD.

(o) *Other.* The mixed-finance owner must provide any other materials or information that HUD may from time to time require.

EFFECTIVE DATE NOTE: At 68 FR 67321, Dec. 1, 2003, § 891.820 was added. Paragraphs (a) through (e) and paragraphs (g) through (n) of this section contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 891.823 HUD review and approval.

HUD will review the firm commitment application and mixed-finance proposal as follows.

(a) *Initial screening.* HUD will perform an initial screening of the firm commitment application/mixed-finance proposal to determine that all required documentation and evidentiary materials have been submitted. HUD will advise the mixed-finance owner and Nonprofit Organization of any technical deficiencies in the application and proposal and indicate a date certain by which the remaining information must be submitted.

(b) *Firm commitment and proposal technical processing and approval.* Upon determining that the firm commitment and proposal are complete, HUD will process the firm commitment application and mixed-finance proposal for approval. The firm commitment application will be reviewed in accordance with applicable firm commitment and technical review guidelines. Upon determining that a proposal is acceptable for technical processing, HUD will evaluate the proposal to determine:

(1) Whether the mixed-finance owner has the legal capacity to enter into all necessary contracts and agreements to complete the development;

(2) Whether the proposed sources and uses of funds are eligible and reasonable, and show an appropriate proration of supportive housing funds and funds from other sources, and whether the project, including the market-rate units, is financially feasible and is projected to remain feasible for the 40-year term of the very low-income use

restrictions, given the available financing structure, firm financing commitments, and market for the project;

(3) Whether the mixed-finance owner has the resources and capacity to develop and operate the project for the required time period;

(4) Whether the HUD-assisted units are comparable in size, location, appearance, and design to any units without HUD assistance;

(5) Whether the mixed-finance owner will develop and operate the Section 202 or 811 assisted units in accordance with all HUD program requirements, including program regulations governing those units;

(6) Whether the documents include the required covenants and use restrictions, which must be recorded prior to release of HUD funds;

(7) Whether the mixed-finance owner has obtained all necessary State, local, and Federal approvals, zoning changes, or variances;

(8) Whether the design of the development meets applicable accessibility requirements;

(9) Whether the supportive services to be provided for the Section 202 or 811 units are at least equal to the services the sponsor proposed to provide in its 202 or 811 application for funding;

(10) Whether the assistance to be provided under this part, taking into account all assistance to be received by the project, is no more than necessary to provide affordable housing, as required by section 102(d) of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3545(d);

(11) Whether any other processing criteria that HUD may prescribe from time to time are satisfied;

(12) Whether the mixed-finance owner has certified to compliance:

(i) With all applicable Federal, State, or local civil rights laws and regulations;

(ii) With all environmental regulations;

(iii) With applicable wage rates determined in accordance with the Davis-Bacon Act and with related labor standards.

§ 891.825 Evidentiary materials.

Any updates or amendments to materials submitted at the firm commitment/mixed-finance proposal stage must be submitted as part of the evidentiary materials, even if not specifically requested.

(a) *General.* Except as otherwise expressly provided, a mixed-finance owner is required to submit for HUD review and approval prior to HUD's approval of the release or drawdown of capital advance funds all evidentiary materials required by HUD. Upon HUD approval of evidentiary materials, the evidentiary materials will be executed and recorded in the order required by HUD, along with other required documents. All the executed documents for the mixed-finance project will be made available for HUD's final review before drawdown of funds. The evidentiary materials must include:

(1) *Organizational documents.* Updated organizational documents of the mixed-finance owner, nonprofit organization, and all participating parties in the partnership showing that:

(i) One of the purposes of the mixed-finance owner is the promotion of the welfare of elderly persons or persons with disabilities;

(ii) There is no prohibited conflict of interest or prohibited identity of interest involving the sponsor, the nonprofit organization, or the mixed-finance owner, and the mixed-finance owner is not controlled by or under the direction of persons or firms seeking to derive profit or gain from the mixed-finance owner. Individual conflict of interest and identity of interest and disclosure certifications must be submitted by all directors, officers, shareholders, trustees, and agents of the mixed-finance owner and the nonprofit organization and all development team members; and

(iii) A partnership agreement has been entered into between the mixed-finance owner, its general partner, and any other participating entities that establishes the relationship of the partners with respect to implementation of the proposal.

(2) *Amendment to capital advance.* A mixed-finance amendment to the capital advance agreement.